

## **Davis-Bacon and Related Acts Frequently Asked Questions (FAQ) for Clean Water SRF ARRA Recipients**

**Note:** We will be continually updating this FAQ list. If your question is not answered below, please contact us at [DavisBacon@waterboards.ca.gov](mailto:DavisBacon@waterboards.ca.gov) or (916) 327-9978.

### **1. How do workers on a construction site know that a project is covered by the Davis-Bacon Act? How do they know the prevailing wage to which they are entitled?**

The wage determination (including any additional classifications and wage rates conformed) and a Davis-Bacon poster (WH-1321) must be post at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen. In the absence of such posted information, any person who wants to determine if the project is covered should contact the federal agency funding or assisting the project or the Wage and Hour Division. Multi-year construction contracts that contain option provisions by which a contracting agency may unilaterally extend the term of the contract require inclusion of a current wage determination at the time the option is exercised. (In contrast, in situations where a contractor is given additional time to complete original contract commitments, the wage determination in that contract applies).

### **2. What is a Wage Determination?**

A "wage determination" is the listing of wage rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential). The term "wage determination" is defined as including not only the original decision but any subsequent decisions modifying, superseding, correcting, or otherwise changing the rates and scopes of the original decision.

### **3. How do I obtain a wage determination for a construction project to be performed at a location not covered by a published determination?**

If no general wage determination is listed for a given county and type of construction, the following procedure should be followed: The recipient shall obtain the wage determination for the locality in which a covered activity subject Davis-Bacon will take place prior to issuing request for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to Davis-Bacon. These wage determinations shall be incorporated into solicitations and any subsequent contracts.

Prime contracts must obtain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

The Federal agency (EPA) funding or financially assisting the construction project requests a wage determination under the Davis-Bacon Act or any of the related prevailing wage statutes by submitting a [Standard Form \(SF\) 308](#) to the following address:

US Environmental Protection Agency, Region 9  
Attn: Joe Ochab  
75 Hawthorne Street (MTS04)  
San Francisco, CA 94105

In completing a SF-308, the agency must furnish:

1. A sufficiently detailed description of the project to indicate the type(s) of construction involved. Separate attachments, if necessary for identification of the type of project, must be furnished.
2. The county (or other civil subdivision) and State in which the proposed project is located. The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing will take at least 30 days.

A copy should also be sent to the State Water Resources Control Board at the following address:

State Water Resources Control Board  
Clean Water SRF Program  
1001 I Street, 17<sup>th</sup> Floor  
Sacramento, CA 94244-2120

Attn: Davis-Bacon Compliance

For more information please visit: <http://www.wdol.gov/>

**4. Is it possible for more than one wage schedule to apply to specifications for a particular contract?**

Yes. Construction projects are generally classified as either [Building](#), [Heavy](#), [Highway](#) or [Residential](#) for purposes of issuing wage determinations. Wage schedules for one or more of these construction categories may have application to construction items contained in a proposed construction project. Guidelines for the selection of proper wage schedules are set forth in [All Agency Memoranda No. 130 \(March 17, 1978\)](#) and [No. 131 \(July 14, 1978\)](#). Any questions regarding the application of these guidelines to a particular project, or any disputes regarding the application of the wage schedules issued for the various construction categories are to be referred to the Department of

Labor (DOL), [Wage and Hour Division](#), together with relevant information, including a complete description of the project and area practice.

**5. Can apprentices, trainees, and/or helpers work on a project covered by the Davis-Bacon or related Acts (DBRA), and what wage rates must they be paid?**

Individuals who meet the following definition may be employed as **apprentices** on DBRA projects:

(a) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau,

or

(b) A person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been properly certified to be eligible for probationary employment as an apprentice.

**Trainees** employed must be persons registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have been so certified by that Administration.

Information on wage rates paid to apprentices and trainees is not reflected in Davis-Bacon wage determinations. Similarly, their addition through the additional classification procedure (conformance) is neither necessary nor appropriate. On projects funded by the Federal-Aid Highway Act, apprentices and trainees certified by the Secretary of Transportation are not covered by Davis-Bacon labor standards.

The proper wage rates to be paid to apprentices and trainees are those specified by the particular programs in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices or trainees on a covered project have not been properly registered within the meaning of the Regulations and the contract stipulations, or are utilized at the job site in excess of the ratio to journeymen permitted under the approved program, they must be paid the applicable wage rates for laborers and mechanics employed on the project performing in the classification of work they actually performed. This applies regardless of work classifications which may be listed on the submitted payrolls and regardless of their level of skill.

**Helper** classifications may be issued in or added to a wage determination only where (a) the duties of the helpers are clearly defined and distinct from those of the

journeyman classification and from the laborer, (b) the use of such helpers is an established prevailing practice in the area, and (c) the term "helper" is not synonymous with "trainee" in an informal training program.

**6. What wage rates must be paid to supervisory employees (foremen, superintendents, etc.) employed on a covered project?**

The wage rates for bona fide supervisory employees are not regulated under the [Davis-Bacon and Related Acts](#) because their duties are primarily administrative or executive in nature rather than those of laborers or mechanics. However, such employees who devote more than 20 percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent, and must be paid at least the appropriate wage rates specified in the wage determination. Employees who are bona fide executive, administrative, or professional employees as defined under the Fair Labor Standards Act at [29 CFR Part 541](#) are not covered by the Davis-Bacon Act.

**7. If it is believed that the rates on a wage determination are not accurate, can the wage determination be appealed?**

Yes. Any interested person requesting reconsideration of a wage determination or of a ruling regarding application of a wage determination to a specific construction project should present their request in writing accompanied by supporting data or other pertinent information to the [Wage and Hour Division](#). The Wage and Hour Division should respond within 30 days or notify the requestor within this time frame that additional time is needed.

An "interested person" is considered to include, without limitation:

(1) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any laborer or mechanic, or any labor organization which represents a laborer or mechanic, who is likely to be employed or to seek employment under a contract containing a particular wage determination, and,

(2) Any Federal, State, or local agency concerned with the administration of a proposed contract or contract containing a particular wage determination issued pursuant to the Davis-Bacon Act or any of its related statutes.

If reconsideration of a wage determination has been sought and denied, an appeal for review of the wage determination or its application may be filed with the [Administrative Review Board](#), U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Requests for review of wage determinations must be filed, and any new wage determination resulting from the appeal must be issued, before contract award or start of construction where there is no award (or under the National Housing

Act, before the date of initial endorsement, or the beginning of construction, whichever occurs first; or under Section 8 of the U.S. Housing Act of 1937, before the date of the housing assistance payments agreement, or the beginning of construction, whichever occurs first).

The Wage Appeals Board (now the Administrative Review Board) was established by the Secretary of Labor in 1963 to decide, at its discretion, appeals concerning questions of fact and law related to final decisions of the Wage and Hour Division concerning:

- Controversies over the payment of prevailing wage rates, overtime pay, or proper classifications;
- Wage determinations issued under the Davis-Bacon and Related Acts;
- Debarment cases arising under [29 CFR Part 5](#);
- Cases involving the assessment of liquidated damages under the Contract Work Hours and Safety Standards Act;
- Appeal of any other final decision under [29 CFR Part 1](#), [Part 3](#) or [Part 5](#).

The Administrative Review Board consists of three members, one of whom is designated chairman. The members are appointed by the Secretary of Labor and majority vote of the Administrative Review Board is necessary for a decision, except that a decision to hear any appeal may be made by one member. The Board can act as fully and finally as the Secretary of Labor concerning the matters within its jurisdiction. The rules prescribed in [29 CFR, Part 7](#), "Practice Before Wage Appeals Board", govern the proceedings of the Board.

**8. Does Davis-Bacon apply to the entire project?**

Yes, Davis-Bacon applies to the entire project, not just the portion funded by ARRA.

**9. If the Davis-Bacon language and clauses are included in the bid solicitations but not the actual wage determinations, is the project in compliance?**

Yes, the project is in compliance. The assistance recipient (AR) must also include the Davis-Bacon language and clauses into any contracts and subcontracts.

**10. If the Davis-Bacon language and clauses are included in the contract but not the actual wage determinations, is the project in compliance?**

Yes, the project is in compliance. However, the wage rates cannot be locked in for the life of the project unless the contract lists: 1) wage categories and actual rates, or 2) wage category citations and dates of access. If the wage rates are not locked into the contract and the Department of Labor (DOL) raises the rate, the contractor must pay the higher rate.

**11. Does Davis-Bacon apply to projects that consist of putting on workshops, attending outreach events and providing educational publications?**

No. Davis-Bacon only applies to laborers and mechanics employed by contractors or subcontractors working on projects funded in part or whole by ARRA.

**12. How are volunteers treated under Davis-Bacon?**

Davis-Bacon applies to all laborers and mechanics, whether they are volunteers or paid workers. Therefore, volunteer laborers and mechanics must be paid prevailing wages. If the volunteers are not performing construction work as defined by Davis-Bacon, they do not have to be paid prevailing wages and can volunteer.

**13. What Davis-Bacon prevailing wage rates are used in the bid solicitation and contract?**

The prevailing wage rate for the job classification for the locality must be used. If the wage rate changes more than 10 days of the bid opening, the solicitation must be modified to include the new rate. If the wage rate changes less than 10 days of the bid opening, the AR must get a written determination from the State Water Board that there is not reasonable time to modify the bid solicitation.

**14. Do projects need to comply with state and federal prevailing wage laws?**

Yes, all projects need to comply with both state and federal prevailing wage laws and must pay the higher rate.